

Bureau of Indian Affairs, Interior

§ 125.4

§ 125.3 Definitions.

As used in this part, the term—

(a) *Area Director* means the Area Director, Aberdeen Area Office, BIA, or his/her delegate.

(b) *Bureau* or *BIA* means the Bureau of Indian Affairs, Department of the Interior.

(c) *Commissioner* means the Commissioner of Indian Affairs, BIA, or his/her delegate.

(d) *Sioux benefits* means the allotment of stock and farming equipment plus \$50.00 cash as provided for by the Act of March 2, 1889, c. 405, §17, 25 Stat. 888, 895, or its commuted cash value as provided in the Act of June 10, 1896, c. 398, 29 Stat. 321, 334.

(e) *Sioux Indian* means a member of any of the bands or tribes comprising the Sioux Nation of Indians to which the Act of March 2, 1889, c. 405, 25 Stat. 888, applied.

(f) *Single person* includes all unmarried persons (other than an unmarried person under the age of eighteen years) and any person who is legally separated, divorced, or widowed.

(g) *Head of a family* means only:

(1) A married person who meets the requirements of §125.4(c)(1) or (2) (if living with his/her spouse) or §125.4(c)(3) (if not living with his/her spouse), and

(2) An unmarried person under the age of eighteen years who meets the requirements of §125.4(c)(3).

(h) For the purpose of determining family support under §§125.4(c)(2) and 125.4(c)(3), *family* means two or more persons (including the applicant) related by blood, through marriage, or by adoption to the applicant and who live together in the same household and are dependent upon the applicant for all or part of their support.

§ 125.4 Eligibility.

(a) *Allotted Sioux Indians*. The eligibility of allotted Sioux Indians for Sioux benefits is governed by the Act of March 2, 1889, c. 405, §17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984. The Act of June 18, 1934, c. 576 §14, 48 Stat. 987, 25 U.S.C. 474, is inapplicable to any Sioux Indian to whom an allotment of land has been made under the provisions of

the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior federal statute. Under the applicable statutes, an allotted Sioux Indian is eligible for Sioux benefits if—

(1) He/she received a valid allotment of land under the provisions of the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior Federal statute (regardless of whether such allotment is still held by the applicant);

(2) He/she is either a single person over the age of eighteen (18) years or a head of a family (as provided in §125.4(c));

(3) He/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in §125.5); and

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in §125.4(d)).

(b) *Unallotted Sioux Indians*. The Act of June 18, 1934, c. 576, §14, 48 Stat. 987, 25 U.S.C. 474, applies only to Sioux Indians who, but for the provisions of section 1 of that Act, 25 U.S.C. 461, would have been eligible for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior Federal statute, and have not, in fact, been allotted lands under the provisions of such Federal statutes. That Act has current application only to unallotted members of the Cheyenne River Sioux Tribe because of the proviso that the payment of Sioux benefits under that Act would continue only until such time as the lands available for allotment on each reservation as of June 18, 1934, would have been exhausted by the allotment of eighty (80) acres of land to each person receiving Sioux benefits under that Act. Under this statute a member of the Cheyenne River Sioux Tribe is eligible for Sioux benefits if—

(1) He/she would be eligible, but for the provisions of the Act of June 18, 1934, c. 576, §1, 48 Stat. 984, 25 U.S.C. 461, for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior Federal statute, and has not been allotted lands under the provisions of such Federal statutes;

(2) He/she is either a single person over the age of eighteen (18) years or a

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head of a family (as provided in § 125.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in § 125.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 125.4(d)); *and*

(5) The hypothetical allotment of 80 acres of tribal land to the applicant would not exhaust the lands available for allotment on the Cheyenne River Indian Reservation as of June 18, 1934, considering the allowance of similar hypothetical allotments to other such Indians previously receiving Sioux benefits under such Act.

(c) *Head of a family.* The following criteria apply in determining head of family status under both §§ 125.4(a) and 125.4(b).

(1) Except as provided in § 125.4(c)(2), when an applicant for Sioux benefits is married and living with his/her spouse, the applicant will be deemed to be a head of a family if designated as such by both the applicant and his/her spouse.

(2) When an applicant for Sioux benefits is married and living with his/her spouse, but the applicant's spouse (i) does not concur in the applicant's designation as head of the family, or (ii) has previously received Sioux benefits as head of the family which includes the applicant, the applicant will be deemed to be a head of a family if the economic contribution to the support of the family attributable to the applicant exceeds the contribution by his/her spouse for the eighteen (18) months period immediately preceding the date of the application for Sioux benefits.

(3) When an applicant for Sioux benefits is (i) unmarried, or (ii) married, but not living with his/her spouse, the applicant will be deemed to be a head of a family if the primary source of economic contribution to the support of the family is attributable to the applicant. Welfare or support payment made to the applicant by the government or his/her spouse shall be deemed attributable to the applicant.

(4) The Bureau shall not presume that a husband is a head of a family for purposes of this part solely because of his status as a husband. The Bureau

shall not presume that a wife is not a head of a family for purposes of this part solely because of her status as a wife.

(5) The Bureau shall not presume that a Sioux woman married to a non-Sioux man is a head of a family for purposes of this part solely because of such status. The Bureau shall not presume that a Sioux woman married to a Sioux man is not a head of a family for purposes of this part solely because of such status.

(d) *Double benefits.* The prohibition against multiple payment of Sioux benefits to a person in his/her own right extends to the payment of Sioux benefits under any Federal statute. However, a person will not be deemed to have received payment of Sioux benefits in his/her own right due to the fact that:

(1) Sioux benefits were paid to such person in his/her capacity as an heir of an Indian who, under prior law, was held to have a vested right to receive such benefits as of the date of death, or

(2) Sioux benefits have previously been paid to that person's spouse or former spouse. Although the prohibition against double benefits would not preclude both spouses from receiving Sioux benefits during their marriage (assuming they both were otherwise eligible) or preclude a widowed or divorced applicant from receiving Sioux benefits merely because his/her spouse had previously received Sioux benefits, an applicant would not be able to receive Sioux benefits in his/her own right first as a single adult and again as a head of a family, or vice versa.

§ 125.5 Application procedure.

(a) *Agency Superintendent.* Application for Sioux benefits must be submitted to the Agency Superintendent for the reservation and shall contain such information as may be prescribed by the Bureau. Applications must be submitted within the lifetime of the applicant. Within thirty (30) days of receipt of a completed application, the Agency Superintendent shall verify the necessary information and forward the application and relevant documentation to the Area Director along with his/her recommendation for approval or disapproval.